

Chapter 3

Psychological Perspectives on Joint Physical Custody



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Abstract This overview discusses key findings, questions, and controversies about joint physical custody (JPC) emphasizing psychological issues for research and practice. Children living in JPC are slightly better adjusted, on average, but it is not clear whether this is a consequence of the arrangement or due to nonrandom selection into it. Moreover, no consistent evidence links specific variations in JPC to better or worse child adjustment, including equal or some other pattern of shared time. Parental conflict/cooperation is the factor most firmly, if still somewhat tenuously, established as a moderator of JPC effects. Other important moderators include logistics (e.g., geographical distance between parents), developmental stage (very young children and older adolescents may fare less well), and personality (a factor only beginning to be explored). The clearest implication for policy and practice is that children will fare better if their parents cooperate in crafting a parenting plan designed to meet their individual needs.

Keywords Joint physical custody · Selection or causation · Logistics · Conflict/cooperation · Developmental stage · Child personality

Psychological perspectives on joint physical custody (JPC) are critically important to parents who live apart and to the mental health and legal professionals who work with, influence, and perhaps decide children's living arrangements for parents. Questions and positions about JPC also raise broad social questions about the roles of men and women not only as parents but also as workers. While JPC could be analyzed from each of these points of view, the focus of this chapter is the well-being of children living in JPC, a topic of concern for parents, professionals, and society.

This chapter offers a broad overview of research on key psychological topics, questions, and controversies concerning how JPC affects children. It should be noted

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at the outset that, given limited research, this summary raises more questions than it answers. The review of studies is more illustrative than definitive, reflecting limited, current understanding and suggesting an agenda for future research. While emphasizing research, the chapter also should be of practical value to mental health and legal professionals by highlighting questions parents often ask, while hopefully also inoculating practitioners against premature claims that research on JPC is definitive.

The chapter is divided into two major sections. The first considers the definition of JPC, JPC in different family forms, evidence on how children fare in JPC generally, and the all-important question of selection versus causation. The second section asks when JPC may help children, and when it may harm them, with a specific focus on logistical considerations, parental conflict and cooperation, children's age, and children's personality and mental health.

3.1 What Is JPC and Does it Benefit Children?

Joint physical custody is defined here, as it often is defined in research (e.g., Bauserman 2002; Smyth 2017), as an arrangement where children spend at least 25% of their time with each of their parents who live apart. Functionally, this definition includes equal time, for example, swapping homes every other week, or the 2-2-5-5 schedule, where children spend every Monday and Tuesday overnight with one parent, Wednesday and Thursday with the other, and alternate three-day weekends with each. However, the 25–50% definition also includes many other arrangements, such as weekdays with one parent and weekends with the other, or even the school year with one parent and summers and most school vacations with the other (Emery 2016).

3.2 Variations in JPC Schedules

The very task of defining JPC raises two central and often controversial considerations about the arrangement. First, some advocacy groups assert that equal time is the best, perhaps the only, true form of JPC. In fact, fathers' rights organizations have been lobbying to make equal custody time the guiding legal standard, and laws promoting equal time have been adopted in a few countries, including Australia (Smyth and Chisholm 2017) and Belgium (Vanassche et al. 2017), as well as some smaller jurisdictions. Demographic evidence shows a dramatic increase over recent decades in both unequal (25–49% time) and particularly equal JPC, at least in the U.S. state of Wisconsin where unequal JPC grew from 7% to 15% between 1989 and

2010, while equal went from 5% to 35%¹ (Meyer et al. 2017). At this time, however, there is no clear evidence on the relative benefits for children of equal versus unequal JPC, so this debate remains philosophical, not empirical.

This brings us to the second issue: Are different JPC schedules more or less beneficial to children? In addition to the equal versus unequal question, issues of importance include (a) whether more transitions affect children adversely (e.g., alternating homes every day versus every week), (b) whether longer separations from each parent harm younger children (e.g., babies may benefit from more transitions and shorter separations from either parent, while school-age children benefit from fewer transitions and longer separations), (c) whether flexible, evolving custody arrangements work better for both children and parents (e.g., babies may spend most of their time with the primary attachment figure, but more equal time with both parents as they grow older), and (d) whether JPC is more beneficial, harmful, or desirable to children of different ages (e.g., a teenager's own, busy schedule may make JPC less desirable to adolescents).

At present, the field lacks even basic demographic research² on how many parents follow the above or the many other variations in JPC, let alone on whether, at what ages, and under what circumstances different schedules benefit or harm children and families. Of course, many parents agonize over these questions and more, as they try to craft the best arrangements for their children and themselves, and they often turn to practicing professionals for advice. In an effort to respond to parents' concerns, some have offered research-informed, developmental-based guidelines to help parents in their decision making (e.g., Emery 2016). While experience with JPC and knowledge about child development suggest reasonable answers to many of parents' pressing questions, research is a long way from supporting those answers definitively.

3.3 Relationship Status

Another broad consideration about JPC concerns the status of the relationship between parents. Parents who have made a commitment to each other (whether married or cohabiting), lived together for years, and both been involved in rearing multiple children are very different from parents who have had a brief relationship,

¹Sole mother custody dropped from 76% to 42% and sole father custody from 9% to 6% over the same time period. At both time points, a very small percentage of cases resulted in split custody, with each parent having custody of at least one child.

²In the U.S., no national demographic data exist even on the prevalence of JPC, however it is defined. In Belgium, JPC prevalence has been estimated to be 37% among separated parent families (Vanassche et al. 2017), with slightly lower rates found in the Netherlands (Poortman and van Gaalen 2017) and Norway (Kitterod and Wiik 2017). However, JPC was defined differently across counties (33–66% in Belgium; mostly equal in Norway), a fact that complicates comparisons and underscores the need for demographic details on variations in JPC schedules.

never cohabited, and have a newborn. These latter parents need to build a relationship with each other, as well as with their children, a circumstance that raises questions for them, and for courts, about whether JPC is a healthy or even viable arrangement. Few custody studies have focused on these families.

3.4 Average Adjustment in JPC

While important variations in JPC have yet to be studied, a few dozen studies of varying methodological quality have compared the well-being of groups of children living in JPC versus sole custody. Most but not all of these studies find that children in JPC are somewhat better adjusted, on average, as indexed by a variety of psychological measures of personal, social, and academic adjustment (Baude et al. 2016; Bauserman 2002; Smyth et al. 2016; Steinbach 2018). While some wish to interpret this result as supporting the conclusion that JPC *causes* children to adjust better to divorce – and that equal custody therefore should be the guiding legal principle (Nielsen 2018), in fact, research shows that the difference in children’s well-being in JPC versus sole custody is small, .109 standard deviation units according to a recent meta-analysis (Baude et al. 2016). Moreover, the number of existing studies is modest, their methodological quality is uneven, and most work focuses only on adolescents or school-aged children (Smyth et al. 2016; Steinbach 2018).

Perhaps the clearest conclusion from existing research is that the back and forth of JPC does not, in and of itself, appear to create significant, observable problems for most children³. Yet, two additional and critical considerations further cloud the appropriate interpretation of research on the modest benefits associated with JPC: (1) nonrandom selection and (1) individual variations around the average.

3.5 Selection into JPC

Families do not select JPC at random. Evidence indicates that, on average, parents with JPC are wealthier, better educated, have better co-parenting relationships, and include more involved fathers than families with sole custody (Smyth et al. 2016; Steinbach 2018). Each of these factors also is linked with better well-being among children (Smyth et al. 2016), which leads to the question: Is the small difference in child adjustment found between sole and shared custody due to better adjusted families (and children) *selecting* JPC, or does the arrangement *cause* children (and

³Perhaps even this conclusion can be questioned. The unpopularity of bird nesting – where children remain in one home but parents move in and out – would seem to speak to the disruption JPC can cause, despite its other benefits.

families) to be better adjusted? Methodologically careful reviewers view this as a critical and unanswered question (Smyth et al. 2016; Steinbach 2018).

The importance of selection considerations is underscored by a recent study of father's involvement in parenting both before and after JPC (Poortman 2018). Using a population-based sample of 3694 separated parents with minor children in the Netherlands, this investigation found that the benefits of post-separation father involvement (including both JPC and the frequency of father contact in mother custody) were moderated by *pre-separation* father involvement. Children living in JPC (or who had more father contact) fared better than children in sole custody (or who had less contact) when their fathers had been involved parents prior to the separation. Importantly, however, children living in JPC (or who had more father contact) had *more* problems when fathers were low on parental involvement before the separation (Poortman 2018).

This study is one of the first to consider pre-separation factors and JPC, and the findings underscore the need for more longitudinal research. In order to distinguish correlation from causation, researchers need to study changes associated with JPC from before to after separation. In the present context, perhaps the most critical question is: Does children's well-being improve from before to after separation if they live in JPC, or does the slightly better functioning found among children in JPC actually predate the separation and therefore cannot be caused by JPC?

3.6 Boundaries of the Benefits of JPC

A second, critical consideration about association between JPC and somewhat better child adjustment concerns variation around the mean. Even if JPC does causally increase children's well-being, on average, the arrangement still may harm some children in some circumstances, while helping others. Four factors are of particular importance to consider in relation to whether JPC helps or harms children: logistics, parental conflict and cooperation, children's age, and children's personality and mental health.

3.7 Logistics

The viability of JPC, as well as its potential benefits, would seem to be constrained by basic logistical considerations, particularly the ability of parents to provide children with two reasonable homes and the geographic distance between the parents' residences. Evidence indicates that the frequency of children's contact with one parent declines if the parents live an hour's travel or more apart (Furstenberg et al. 1983). Practical considerations like getting children to school – and the need to get children's "stuff" from one home to another – make proximity an even more prominent consideration. Indeed, living near one another, even in the

same neighborhood, is frequently discussed in the practice literature as helping to make JPC successful (Emery 2016).

Notwithstanding such obvious logistical considerations, the author routinely is contacted by parents who have been ordered by judges to follow seemingly harmful schedules in order to maintain JPC. One recent example involved a two-year-old child who was ordered to spend two and one-half months in the geographically distant residences of her mother followed by two and one-half months with her father. Due to concerns about maintaining secure attachments to both parents, mental health professionals worry about separations of more than a day or two at this tender age (Emery 2016; Lamb and Kelly 2001). In a second recent example, a fourteen-year-old was ordered to move across the U.S. each year in order to live equal time with each of his parents. Yet, one wonders about how this adolescent would adjust to – or simply feel about – a yearly change in schools and peer groups, in addition to his family.

How often do judges make orders like these, and what are the consequences for children and families? To the author's knowledge, there is no data on this question. However, the often contentious issue of whether a parent can relocate with the children away from the other parent, and the potentially deleterious effects of relocation, highlight the importance of geographical proximity if children are to maintain close relationships with both parents (Austin 2008)⁴.

3.8 Parental Conflict and Cooperation

Another key consideration in deciding when JPC benefits or harms children is the degree and nature of conflict and cooperation between their parents. A few commentators claim that JPC benefits children whether parental conflict is controlled or raging (Nielsen 2018). This, however, is an unusual position. Many researchers, and legal and mental health practitioners, conclude that JPC benefits children when conflict is contained, but harms children when parent conflict is poorly managed (e.g., Kaspiw et al., 2009; Lee 2002; Spruijt and Duindam 2010). The logic of this latter position seems intuitive. After all, no fault divorce and other efforts to minimize parent conflict such as divorce mediation were premised on research showing that children fare better in low-conflict divorced families than in a high-conflict two-parent families (Emery 1982; Emery and Wyer 1987). The same logic would seem to apply to JPC: Faced with the alternative, children should fare better in low-conflict sole custody than in high conflict JPC.

Empirical research on the moderating effects of conflict is stronger than for other factors considered in this section. Several studies have found that JPC is linked to

⁴Today, children and parents can maintain contact using telephones, computers, and other electronic devices. The extent to which such contact is a viable substitute for face-to-face interaction is both controversial and understudied. See Merla et al. ([this volume](#)) and Poortman ([this volume](#)).

worse child adjustment when parent conflict is high. For example, a study of 1570 Belgian adolescents found that, when adolescents reported more parental conflict, JPC (versus sole custody) was linked to lower life satisfaction (for boys and girls) and to increased depression (for girls) (Vanassche et al. 2013). Similarly, Modecki et al. (2015) found that moderate contact with fathers combined with low parental conflict, measured during adolescence, predicted higher academic achievement and fewer externalizing problems in young adulthood in a sample of 156 U.S. teenagers followed longitudinally. The teenagers from moderate contact, low conflict families fared better than those from either low contact and moderate conflict families or high contact and high conflict families (the three subgroups identified through latent profile analysis). Young adults in the high contact, high conflict group were no better adjusted than those in low contact, moderate conflict families, again pointing to the importance of conflict over contact (Modecki et al. 2015).

Not every study has found that conflict predicts worse adjustment in JPC (Mahrer et al. 2018). It may be that children's problems in high conflict JPC become more evident as time passes (Mahrer et al. 2018). The definition of high conflict also varies between studies. Given that conflict is expected in divorce, this raises the important question: How much conflict is too much?

The present author has argued that one index of too much conflict is when parents are so acrimonious that they resort to litigation, asking a judge to decide custody for them (Emery 1999, 2011, 2016). Ordering JPC in contested custody cases, roughly 10% of all divorces (Maccoby and Mnookin 1992), may be unhealthy for children, even though JPC might appear to be fair to parents.

Evidence from Australian courts suggests that many judges share this concern. An Australian national law enacted in 2006 encouraged equal, and if not equal, significant and substantial contact with both parents. However, an extensive analysis of legal decisions under the law found that Australian judges ordered JPC in only 3% of contested cases in 2011–2012, a lower percentage than in earlier years under the law (Smyth et al. 2014)⁵. Another analysis in this same report showed far higher rates of JPC (largely reached as a result of parental agreement) when parents described their relationship as friendly versus either distant or having lots of conflict (Smyth et al. 2014).

3.9 Children's Age or Developmental Stage

Children's age or developmental stage is a third factor that may influence whether JPC benefits or harms children. The school-age years, and perhaps the preschool years, may be the "sweet spot" for JPC (Emery 2016). Adolescents may find that

⁵A subsequent analysis using somewhat different methods found a somewhat higher level of judicial orders of JPC in contested cases, but they still represented a small minority of cases – 9.7% (Smyth and Chisholm 2017).

their schedule with each parent disrupts a third, more critical schedule, their own (Maccoby and Mnookin 1992), while very young children's attachment security may be undermined by too long or frequent separations from their primary attachment figure (McIntosh 2011).

The question of what is the best schedule for infants and toddlers has become a topic of considerable debate in recent years (Lamb 2012; McIntosh 2011). Both sides of this controversy focus on the importance of infant-parent attachments (Main et al. 2011) to the current and future well-being of very young children. One attachment-based position highlights the importance of a secure, primary attachment, usually but not always with the mother (Sroufe and McIntosh 2011). The other attachment-based position highlights the importance of multiple attachments, to both the mother and the father (Lamb and Kelly 2001).

Interestingly, the opposing positions both acknowledge the benefits of both attachment security and multiple attachments, but the primacy placed on one over the other has led to very different recommendations about schedules. For example, experts who prioritize attachment security suggest that babies should reside primarily with one parent to promote attachment security, but the same experts also want babies to have frequent contact with the other parent (several visits weekly plus occasional overnights) so they can also develop an attachment to their other parent (Sroufe and McIntosh 2011). Experts who prioritize multiple attachments want babies to have equal or near equal contact with both parents, including overnights, but the same experts would have children switching homes every day or two in an effort to maintain secure attachments by keeping separations from either parent relatively short (Lamb and Kelly 2001).

By now, the reader will not be surprised to learn that research on this topic is inadequate. In fact, only four studies in the world have directly addressed the question of overnight frequency and infant attachment security. The largest study was conducted by the author and his graduate students and included 1023 one-year-olds and 1547 two- and three-year-olds in a sample representative of 20 U.S. cities with a population of 200,000 or more. Overnights of once a week or more during the first year of life predicted a significantly higher rate of attachment insecurity at age 3 in comparison to infants who had some but less frequent overnights (Tornello et al. 2013). Two- and three-year-olds who had 5 or more overnights every 2 weeks, that is, JPC, also had higher attachment insecurity, but comparisons with other father contact classifications were not statistically significant for this age group.

It should be noted that (a) the sample in this study included disproportionate numbers of poor, never married minority parents, consistent with the population of large U.S. cities; (b) the measure of attachment security was a variation on the attachment Q-sort completed by mothers; and (c) the majority of the weekly overnight group (57%) did *not* have insecure attachments. On the other hand, higher rates of attachment insecurity were found in the weekly overnight group even though, in comparison to less frequent contact groups, mothers rated the co-parenting relationship and the father's parenting more positively. Moreover, the study broadly replicated a large Australian study (McIntosh et al. 2013), as it was intended to do, by using identical definitions of overnight frequency but a better, if

still imperfect, measure of attachment security. Finally, another, small scale study also found some indications of more attachment problems associated with more frequent infant overnights (Solomon and George 1999a, b), while a fourth study found that having any overnights (more than one, ever) was neither positively nor negatively associated with measures of infants and toddlers well-being (Pruett et al. 2004).

The polarized and political nature of the debate about overnights for very young children is apparent in the publication of a so-called “consensus report” that claimed to review a wider range of the relevant literature and included endorsements from 110 researchers and practitioners (Warshak 2014). However, (1) the report was never peer reviewed (as noted in the publication, the paper was submitted and accepted on the same day), (2) it contained no information on number of professionals contacted who did *not* endorse the author’s recommendations or even on the population that was sampled, (3) none of the authors of any of the four direct studies of overnights and very young children (i.e, those cited above) were contacted about their “consensus,” and (4) shortly before the “consensus” report was published, the author of the report, as well as the present author, both participated along with 30 other family law experts in a conference designed to reach consensus about JPC hosted by the Association of Family and Conciliation Courts. This diverse group explicitly did *not* reach consensus (Pruett and DiFonzo 2014), yet shortly after this meeting, the author of the controversial report nevertheless went on to claim “consensus.” Finally, the review (Warshak 2014) included 16 studies, 12 of which either were not empirical studies, included older children, did not directly study overnights and attachment, or contained all three problems. Yet, the reviewer repeatedly labeled three of the four direct studies cited above as “outliers” (McIntosh et al. 2013; Solomon and George 1999a, b; Tornello et al. 2013). In short, the so-called “consensus” report is an example of what the present author and other in experts have called “scholar-advocacy bias,” where evidence gets “bent” in order to promote a cause, the fathers’ rights cause in this case (Emery et al. 2016).

Despite consensus claims, there is no clear evidence-based conclusion about frequent overnights away from the primary attachment figure and attachment insecurity. In the absence of definitive research – and given the cautions raised by 3 of the 4 direct studies, the present author believes that the risk of infants being securely attached to no parent is greater than the risk of being securely attached to only one parent. This conclusion leads him to favor schedules that promote and preserve a primary, secure attachment, while also building a secure second attachment in the first year of life. However, the schedule should evolve to more equally shared parenting time as infants become toddlers and preschoolers (Emery 2016).

3.10 Children's Personality and Mental Health

A number of practicing mental health professionals have suggested that the JPC is contraindicated or at least more challenging when children suffer from certain psychological problems, particularly Attention-Deficit/Hyperactivity Disorder (ADHD) or Autism Spectrum Disorder (ASD) (Pickar and Kaufman 2015). Surprisingly, no high quality, empirical research has examined whether children with these disorders actually are less likely to be placed in JPC, and if they are, whether they have more problems than children with the same problems and are living in sole custody.

Beyond psychological disorders, parents and professionals wonder, and worry, if some children's personalities allow them to thrive in JPC, while other children's personalities make sole custody a better option. A recent study instructively addressed this concern. The investigation included 506 adolescents aged 14 to 21 drawn from a national sample of families in Flanders (Sodermans and Matthijs 2014). Results revealed an interaction between adjustment to JPC and youth's conscientiousness. Youths who rated themselves lower on conscientiousness were significantly less depressed and had a higher sense of mastery if they lived in JPC versus sole mother custody. The opposite was found for youth high in conscientiousness, who were less depressed and had a higher sense of mastery when living in sole mother custody versus JPC. The investigators speculated that JPC may be disruptive for orderly, conscientious youth, but attractive to more laid back adolescents (Sodermans and Matthijs 2014).

Like other research on JPC, this finding is more illustrative than definitive. No one should be deciding custody based on adolescent's "Big Five" personality scores. But the research underscores the general idea that JPC may be a good or a bad fit for some children based their individual personality or mental health needs.

3.11 Where Do We Go from Here?

This overview clearly establishes the need for more research on a great many facets of JPC. Fortunately, some high quality studies are being conducted in Europe, Australia, and Singapore, while U.S. efforts lag behind as no federal or private agency has prioritized funding research on JPC or related topics. Hopefully, the U.S. research investment will grow, given the large number of children affected, the controversies involved, and the importance of clear answers to children's (and parents') well-being (Emery 2019).

In the meantime, how can practitioners answer the questions so many parents ask? Perhaps the most honest answer, particularly for legislators and policy-makers, is that research is complicated, JPC requires careful consideration in terms of the issues outlined here, and research certainly is not definitive, despite some claims that

it is. In short, there are no quick and easy empirically-based answers about JPC for legal policy.

For practicing legal and mental health professionals, the unanswered questions comprise a series of concerns to share with parents who are seeking to construct a JPC arrangement that will work for their family. Toward that end, parents, and the professionals who work with them, are wise to attempt to resolve their differences in mediation or some other, more cooperative forum for dispute resolution. Mediation has been demonstrated to lead to improved long-term parenting and co-parenting, and the sustained involvement of both parents in children's lives (Emery et al. 2001).

Working together cooperatively also gives parents a way to answer unanswered research questions individually for their own children and family. Parents can experiment to see what actually *does* work for their children, rather than guessing what *might* work based limited research on average child and family well-being. That is, parents can try what they believe is a good schedule for several weeks or months. If the plan is not working, however, they can change it and try something else.

Working together also gives parents other opportunities to individualize JPC. For one, cooperative parents can construct somewhat different schedules for their different children. Differing schedules might be based on factors such as children's age, personality, and/or preferences. For example, a very young child might have more overnights with one parent, while older children have a more equal number of overnights with each parent. Alternatively, parents might devise schedules that vary a bit from child to child simply to give children and parents some one-on-one time. Once a month, for example, one child might transition from one home to the other on a Friday afternoon, while the other transitions Saturday at noon. If parents alternate this arrangement between children, every parent-child pair gets some regular one-on-one time. The schedule also has the advantage of making the parenting time "pie" bigger (Emery 2016).

Parents who cooperate also can be more flexible in changing schedules over time, so a plan can grow and change along with children's and parents' changing developmental needs. The schedule for an infant might change when she becomes a toddler, for example, and then again when she becomes a preschooler. Custody schedules often do change as children grow older. Recognition of this fact in advance not only prepares parents for the likelihood of change, but also can help parents accept a less than ideal current schedule in the present.

In contrast to cooperative parents, parents who fail to work together close out options for themselves and for the children. As noted earlier, in fact, parents who fail to contain their understandable anger may undermine the success of or even the possibility of JPC.

Acknowledgement This chapter benefited from the support of the Centre for Population, Family and Health (CPFH) at the University of Antwerp which enabled Open Access.

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